

**00811-OSE**  
**STANDARD SUPPLEMENTARY CONDITIONS**

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**1 GENERAL CONDITIONS**

- 1.1** The *General Conditions of the Contract for Construction*, AIA Document A201, 1997 Edition, Articles 1 through 14 inclusive, is a part of this Contract and is incorporated as fully as if herein set forth. For brevity, AIA Document A201 is also referred to in the Contract Documents collectively as the "General Conditions."

**2 STANDARD SUPPLEMENTARY CONDITIONS**

- 2.1** The following supplements modify, delete and/or add to the General Conditions. Where any portion of the General Conditions is modified or any paragraph, subparagraph or clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of the General Conditions shall remain in effect.
- 2.2** Unless otherwise stated, the terms used in these Standard Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

**3 MODIFICATIONS TO A201-1997**

- 3.1** *Delete Clause 1.1.2(2) and substitute the following:*

(2) between the Agency and a Subcontractor or Sub-subcontractor, except as set forth in Paragraph 5.4.

- 3.2** *Add the following Subparagraph 1.1.8:*

**1.1.8 THE MANUAL.** The Manual is the *"Manual for Planning and Execution of State Permanent Improvements - Part II"* as published by the Office of State Engineer (OSE).

- 3.3** *Add the following Subparagraphs 1.1.9 and 1.1.10:*

**1.1.9 AGENCY.** The State Agency, institution or department that is a party to the Contract. For purposes of the Contract, the term Owner shall include such Agency, whether or not the Agency owns the site or the building.

**1.1.10 NOTICE TO PROCEED.** A document (SE-390) issued by the Agency to the Contractor (with a copy to A/E) fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents.

- 3.4** *Add the following to Subparagraph 1.2.1:*

In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall:

**1.2.1.1** provide the better quality or greater quantity of Work; or,

**1.2.1.2** comply with the more stringent requirement; either or both in accordance with the A/E's interpretation.

- 3.6** *Delete Subparagraph 1.5.1 and substitute the following:*

**1.5.1** The A/E shall assist the Agency and Contractor with the execution of the Contract in accordance with the requirements of the Manual. The A/E shall identify and assist in the correction of any incomplete, missing or unsigned documents upon request of the Agency.

- 3.6** *Delete Subparagraph 1.5.2 and substitute the following:*

**1.5.2** The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Agency, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Agency.

**1.5.3** The Agency assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Agency. Nor does the Agency assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

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**3.7     *Add the following to the end of Subparagraph 1.6.1***

The Agency shall retain all common law, statutory and other reserved rights, in addition to the limited use copyright, in accordance with the contract between the Agency and the A/E for this Project.

**3.8     *Delete the first sentence of Subparagraph 2.1.2 and substitute the following:***

The Agency, upon reasonable written request, shall furnish to the Contractor in writing such information which is in the Agency's possession and which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights.

**3.9     *Delete the second sentence of Subparagraph 2.2.3 and substitute the following:***

Subject to the Contractor's obligations, including those in Subparagraphs 1.5.2 and 3.2.1, the Contractor shall be entitled to rely on the accuracy of information furnished by the Agency pursuant to this Subparagraph, but shall exercise proper precautions relating to the safe performance of the Work.

**3.10    *Delete the word "...under..." in the last sentence of Subparagraph 2.2.4 and substitute "...which is within...". Add the following sentence at the end of Subparagraph 2.2.4:***

Neither the Agency nor the A/E shall be required to conduct investigations or to furnish the Contractor with any information concerning subsurface characteristics or other conditions of the areas where the Work is to be performed beyond that which is provided in the Contract Documents. The Contractor shall not be entitled to rely on the accuracy of any information or services provided pursuant to this Subparagraph.

**3.11    *Delete Subparagraph 2.2.5 and substitute the following:***

**2.2.5** The Contractor will be furnished, free of charge, ten (10) sets of the Drawings and Project Manual and will be furnished, at actual cost to the Agency, as many additional copies as he may require.

**3.12    *Delete Subparagraph 2.4.1 and substitute the following:***

**2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails, within a seven-day period after receipt of written notice from the Agency, to provide the resources needed to achieve correction of such default or neglect with diligence and promptness, the Agency may, without prejudice to other remedies the Agency may have, proceed to correct such deficiencies. In such case an appropriate Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Agency's expenses and compensation for the A/E's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its Surety shall pay the difference to the Agency.

**3.13    *Add the following Subparagraph 2.4.2:***

**2.4.2** If, after achieving Substantial Completion, the Contractor then defaults, or neglects to complete or fails to provide resources adequate to complete the Project within the adjusted Contract Time for Final Completion as defined in Subparagraph 8.2.5, the Agency may carry out the work after giving the Contractor a single seven-day written notice of the Contractor's default or neglect. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Agency's expenses and compensation for the A/E's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its Surety shall pay the difference to the Agency.

**3.14    *Delete the word "...design..." and insert the word "inconsistencies,..." after "Any..." in the first sentence of Subparagraph 3.2.2.***

**3.15    *Change the last sentence of Subparagraph 3.3.1 to read as follows:***

If the Contractor is then instructed by the Agency in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Agency shall be solely responsible for any resulting loss or damage.

**3.16    *Add the following clauses to Subparagraph 3.4.1:***

**3.4.1.1** The Contractor shall not allow the use of asbestos containing products, whether temporary or permanent and whether or not incorporated or to be incorporated in the work, even if the products are nonfriable and/or contain minimal amounts of asbestos, and even though such products may still be legally installed.

**3.4.1.2** The Contractor shall not allow the use of lead materials in public water applications. Lead free solder, flux and pipe must be used in all public drinking water and waste water applications. Lead free solder and flux are defined as containing less than 0.2% lead, while valves, pipes and appurtenances must contain less than 8.0% lead.

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**3.17     Delete Subparagraph 3.5.1 and substitute the following:**

**3.5.1** The Contractor warrants to the Agency and the A/E that all materials and equipment furnished under the Contract shall be in first class condition, and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of the Contract Documents. If required by the Agency or the A/E, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with the Contract Documents, and shall be performed by persons well-qualified at their respective trades.

Unless caused by the Contractor, the Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not performed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Agency or the A/E, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**3.18     Add the following Subparagraph 3.6.2:**

**3.6.2** The Contractor's attention is directed to Title 12, Chapter 9, SC Code of Laws, as amended, concerning withholding tax for nonresidents, employees, contractors and subcontractors.

**3.19     Delete the words "...building permit and other" in Subparagraph 3.7.1.  
Add the following to Subparagraph 3.7.1:**

Pursuant to §10-1-180 of the SC Code of Laws, as amended, no local general or specialty building permits are required for state buildings; however, the Contractor is required to obtain, at its own cost, all state and local business licenses and general building and specialty inspection services as required by the Contract Documents. The Contractor shall be responsible for payment of any charges imposed for reinspection.

**3.20     Delete the last sentence of Clause 3.8.2.3 and substitute the following:**

The amount of the Change Order shall reflect the difference between actual costs under Clause 3.8.2.1, as documented by invoices, and the allowance amounts.

**3.21     Insert the word "...unreasonable ..." between "...avoid..." and "...delay..." in Subparagraph 3.8.3.**

**3.22     Add the following Subparagraph 3.9.2:**

**3.9.2** The Contractor's superintendent and necessary assistants shall be acceptable to the Agency. The Contractor shall notify the Agency, in writing, of any proposed change in superintendent, including the reason therefore, prior to making such change. The superintendent shall not be changed except with the consent of the Agency, unless the superintendent ceases to be in the Contractor's employ.

**3.23     Add the following Clauses to Subparagraph 3.10.1:**

This schedule shall:

**3.10.1.1** indicate the dates for the start and completion of the various elements of the Work, and shall be affirmed or revised monthly as required by the conditions of the Work and upon execution of a Change Order that affects time.

**3.10.1.2** provide a graphic representation of activities and events that will occur during performance of the Work in sufficient detail, and as acceptable to the Agency, to show the sequencing of the various trades for each floor level, wing or work area;

**3.10.1.3** identify each phase of construction and occupancy; and,

**3.10.1.4** set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates").

**3.24     Delete Subparagraphs 3.10.3 and insert the following:**

**3.10.3** The Contractor shall perform the Work in accordance with the most recent schedules submitted to and approved by the Agency.

**3.10.3.1** If the Contractor submits a schedule or schedule progress report indicating, or otherwise expresses an intention to achieve Substantial or Final Completion of the Work or any portion thereof, prior to any completion date required by the Contract Documents or to the expiration of the Contract Time, no liability to the Agency for any failure of the Contractor to do so complete the Work shall be created or implied. The Contractor shall not be entitled to an adjustment in the Contract Sum or the Contract Time for failure to achieve such early completion dates.

**3.25     Add the following sentence to Subparagraphs 3.11.1:**

Prompt delivery to the A/E of the materials and items specified above, in good order, shall be a condition precedent to the Contractor receiving a Certificate of Substantial Completion.

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- 3.26** *After the word "...instructions,..." insert "...training and operations manuals,..." in Subparagraph 3.12.2.*
- 3.27** *Add the following Clauses to Subparagraph 3.12.5:*  
**3.12.5.1** Sprinkler shop drawings shall be prepared by the licensed sprinkler Contractor. The sprinkler shop drawings shall be reviewed and approved by the A/E's engineer of record before submittal to the State Fire Marshal or other authorities having jurisdiction.  
**3.12.6.2** The Contractor shall submit a copy of the State Fire Marshal's approval letter to the A/E and the OSE.
- 3.28** *Delete Subparagraph 3.12. 10 and substitute the following:*  
**3.12.10** When professional certification of materials, systems or equipment is required by the Contract Documents, the A/E shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 3.29** *In the first sentence of Subparagraph 3.18.1 delete the phrase beginning "...and to the extent...with Paragraph 11.3..."*  
*In the first sentence of Subparagraph 3.18.1 after the word "...itself)..." delete the phrase "..., but only to the extent caused..." and insert "...including loss of use resulting therefrom, but only to the extent caused in whole or in part by..."*
- 3.30** *Add the following Subparagraph to Paragraph 3.18:*  
**3.18.3** The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the A/E, the A/E's consultants, and agents and employees of any of them arising out of: (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications; or (2) the giving of or the failure to give directions or instructions by the A/E, the A/E's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.
- 3.31** *Delete Subparagraph 4.1.1 and substitute the following:*  
**4.1.1** The term "Architect," "Architect/Engineer," or "A/E" is the entity named as such in the SE-310, "Invitation For Construction Bids". The "Architect" or "A/E" may be the Agency, if so designated in the SE-310. In the absence of a licensed design professional, these terms mean the Agency.
- 3.32** *Insert the following before the last sentence of Subparagraph 4.2.1:*  
Notwithstanding these responsibilities, no act or omission by the A/E shall be considered a waiver of any of the Agency's rights or interests.  
*Add the following Clause to Subparagraph 4.2. 1:*  
**4.2.1.1** Any reference in the Contract Documents to the A/E's taking action or rendering a decision within a "reasonable time" is understood to mean no more than fourteen (14) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.
- 3.33** *Delete the first paragraph of Subparagraph 4.2.2 and substitute the following:*  
The A/E, as a representative of the Agency, shall visit the site as necessary to fulfill its obligations to the Agency for inspection services, if any, and, at a minimum, to assure conformance with the A/E's design as shown in the Contract Documents and to observe the progress and quality of the various components of the Contractor's Work. The A/E shall: (1) keep the Agency informed about the progress and quality of the Work completed; (2) endeavor to guard the Agency against defects and deficiencies in the Work; and (3) determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.
- 3.34** *After the word "...of..." insert the words "...the Work completed and correlated with the..." in Subparagraph 4.2.5.*
- 3.35** *Delete Subparagraph 4.2.11 and substitute the following:*  
**4.2.11** The A/E will, in the first instance, interpret and decide matters concerning performance under. and requirements of, the Contract Documents on written request of either the Agency or Contractor. Upon receipt of such request, the A/E shall promptly notify the non-requesting party in writing of the details of such request. The A/E's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the A/E shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the A/E to furnish such interpretations until fourteen (14) days after written request is made for them.

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**4.2.11.1** Subject to review pursuant to Paragraphs 4.3, 4.4 and 4.5, as appropriate, the Contractor shall proceed diligently with performance of the Contract in accordance with the A/E's written interpretations or decisions and the Agency shall continue to make payments in accordance with the Contract Documents.

- 3.36** *In the first sentence of Subparagraph 4.2.12 change "...intent of..." to "...design as indicated in...".*

*Add the following to Subparagraph 4.2.12:*

The A/E's interpretations and initial decisions may be, but need not be, accorded any deference in any review conducted under the terms of the Contract or in law. Any such review shall be *de novo*.

- 3.37** *Add the following Subparagraph 4.2.14:*

**4.2.14** In the Specifications or on the Drawings, where the words "as directed," "as required," "as approved," "as permitted" or words of like effect are used, it is to be understood that direction, requirement, approval or permission of the A/E is intended. Similar words, such as "approved," "acceptable," "satisfactory," or words of like import mean approved by, acceptable to, or satisfactory to the A/E.

- 3.38** *Delete the words "...or interpretation..." from the first sentence of Subparagraph 4.3. 1.*

*Delete the words "...and matters in question..." from the second sentence of Subparagraph 4.3.1.*

*Insert the following after the second sentence of Subparagraph 4.3.1:*

A voucher, invoice, payment application or other routine request for payment that is not in dispute when submitted is not a Claim under this definition.

- 3.39** *Delete the first sentence of Subparagraph 4.3.2 and substitute the following:*

**Time Limits for Filing Claims.** Claims by either party arising prior to the date final payment is due must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, except as stated for adverse weather days in Clause 4.3.7.2.

*Add the following to Subparagraph 4.3.2:*

By failing to give written notice of a Claim within the time required by this Subparagraph, a party expressly waives its claim.

- 3.40** *After the word "...Claim..." in the first sentence of Subparagraph 4.3.3, insert "...including any administrative review allowed under Paragraph 4.5...".*

- 3.41** *In SubClause (2) of Subparagraph 4.3.4, change the words "...which differ materially..." to "...that existed at the time of bidding and that differ materially...".*

*Add the following Clause to Subparagraph 4.3.4:*

**4.3.4.1** Any adjustment, including reasonable overhead and profit, in the Contract Sum, or to the Contract Time made pursuant to this Subparagraph shall be determined in accordance with Paragraphs 7.5 and 4.3.7 of this Contract, respectively.

- 3.42** *Add the following to Subparagraph 4.3.7:*

Claims for an increase in the Contract Time shall be based on one additional calendar day for each full calendar day that the Contractor is prevented from working.

- 3.43** *Add the following Subclauses to Clause 4.3.7.2:*

(1) Claims for adverse weather shall be based on actual weather conditions at the job site or other place of performance of the Work, as documented in the Contractor's job site log.

(2) For the purpose of this Contract, a total of five (5) calendar days per calendar month (non-cumulative) shall be anticipated as "adverse weather" at the job site, and such time will not be considered justification for an extension of time. If, in any month, adverse weather develops beyond the five (5) days, the Contractor shall be allowed to claim additional days to compensate for the excess weather delays only to the extent of the impact on the approved construction schedule. The remedy for this condition is for an extension of time only, not money.

(3) The Contractor shall submit monthly with their pay application all claims for adverse weather conditions that occurred during the previous month. The A/E shall review each monthly submittal in accordance with Paragraph 4.4 and inform the Contractor and the Agency promptly of its evaluation. Approved days shall be included in the next Change Order issued by the A/E. Adverse weather conditions not claimed within the time limits of this Subparagraph shall be considered to be waived by the Contractor. Claims will not be allowed for adverse weather days that occur after the scheduled (original or adjusted) date of Substantial Completion.

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**3.44**     *Delete Subparagraph 4.3.9 and substitute the following:*

**4.3.9 Quantity Variations.** If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than fifteen (15) percent above or below the estimated quantity, an adjustment, including overhead and profit, in the Contract Sum shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. Any adjustment in the Contract Sum made pursuant to this Subparagraph shall be determined in accordance with Paragraph 7.5. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, as set forth in Subparagraph 4.3.7. Pursuant to Paragraph 13.13, the A/E shall determine the actual quantities of a unit-priced item used by the Contractor.

**3.45**     *Delete Subparagraph 4.3. 10 in its entirety and substitute the following:*

**4.3.10 CLAIMS FOR LISTED DAMAGES.**

Notwithstanding any other provision of the Contract Documents, including Subparagraph 1.2.1, but subject to a duty of good faith and fair dealing (S.C. Code Ann §11-35-30), the Contractor and Agency waive Claims against each other for Listed Damages arising out of or relating to this Contract. The Listed Damages are:

**4.3.10.1** Damages incurred by the Agency for rental expenses, for losses of use prior to Final Completion, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and for attorney's fees, insurance and interest (excluding post-judgment); and,

**4.3.10.2** Damages incurred by the Contractor for principal office expenses and overhead, including, but not limited to, the compensation of personnel stationed there, rent, utilities and office equipment; for losses of financing, business and reputation; for loss of profit except anticipated profit arising directly from the Work; and for attorney's fees, insurance and interest (excluding post-judgment).

**4.3.10.3** This mutual waiver is applicable, without limitation, to all Listed Damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.1 0 shall be deemed to preclude an award of liquidated damages (including Listed Damages) when applicable, in accordance with the requirements of the Contract Documents. This Subparagraph does not apply to Paragraph 3.18.

**3.46**     *Insert the following Subparagraph 4.3.11:*

**4.3.11 Waiver of Claims Against the A/E.** Notwithstanding any other provision of the Contract Documents (including paragraph 1.2.1), but subject to a duty of good faith and fair dealing, the Contractor waives all claims against both the A/E and any other design professionals who provide design and/or project management services to the Agency, either directly or as independent contractors/subcontractors to the A/E, for Listed Damages arising out of or relating to this Contract. The Listed Damages are damages incurred by the Contractor for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss of profit other than anticipated profits arising directly from the Work, and for attorney's fees, insurance, and interest (excluding post-judgment).

**3.47**     *Delete Subparagraph 4.4.1 and substitute the following:*

**4.4.1 DECISIONS OF THE A/E.** Claims, including those alleging an error or omission by the A/E, shall be referred initially to the A/E for decision. An initial decision by the A/E shall be required as a condition precedent to resolution (pursuant to Paragraph 4.5) of all claims between the Contractor and Agency arising prior to the date Final Payment is due, unless thirty (30) days shall have passed after the Claim has been referred to the A/E, with no decision by the A/E. The A/E will not decide disputes between the Contractor and persons or entities other than the Agency.

**3.48**     *Delete Subparagraph 4.4.3 in its entirety.*

**3.49**     *Add the words "...in accordance with Subparagraph 4.4.5..." at the end of Subparagraph 4.4.4.*

**3.50**     *Insert the following after the first sentence of Subparagraph 4.4.5:*

The A/E's initial decision will be delivered to the parties within two weeks of receipt of any response or supporting data requested pursuant to Subparagraph 4.4.4, or within such longer period as may be mutually agreeable to the parties. If the A/E's initial decision is accepted by the parties, the A/E shall prepare a Change Order with appropriate supporting documentation for the review and approval of the parties and the OSE.

*Delete the words "...mediation and arbitration..." from the second sentence of Subparagraph 4.4.5 and substitute "...resolution pursuant to Paragraph 4.5. Any review of the A/E's written decision or determination shall be de novo."*

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**3.51** *Delete Subparagraph 4.4.6 in its entirety and substitute the following:*

**4.4.6** If the A/E renders its initial decision after proceedings pursuant to Paragraph 4.5 have been initiated, such decision may be entered as evidence, but shall not supersede such proceedings unless the decision is acceptable to all parties concerned.

**3.52** *Delete Subparagraph 4.4.8 in its entirety.*

**3.53** *Delete Paragraph 4.5 in its entirety and substitute the following:*

**4.5** **DISPUTE RESOLUTION**

**4.5.1** Without limiting Subparagraph 4.5.2, any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the A/E or thirty (30) days after submission of the Claim to the A/E, be subject to resolution pursuant to Subparagraph 4.5.2.

**4.5.2** Contractor consents to be governed by Title 11, Chapter 35 of the South Carolina Code of Laws, as amended, and agrees that it applies to and governs the Agreement. Contractor waives any objection it may have now or hereafter to the administrative process required by Title 11, Chapter 35, Article 17. To the extent that Article 17, by its own terms, does not govern a claim or controversy between the parties, Contractor agrees that any suit, action or proceeding arising out of or relating to the Agreement shall be instituted and maintained only in a state or federal court located in Richland County, State of South Carolina. Contractor agrees that any act by the State regarding the Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the Contract Documents.

**4.5.3** Any administrative review of any determination, certification or other decision by the A/E shall be *de novo*.

**3.54** *Delete Paragraph 4.6 in its entirety.*

**3.55** *In the first sentence of Subparagraph 5.2.1 change "...award of the Contract..." to "...posting of the 'Notice of Intent to Award' of the Contract, or a Request for Substitution pursuant to Subparagraph 5.2.4..."*

*In the second sentence of Subparagraph 5.2.1, delete the words "...or the Architect".*

*In the third sentence of Subparagraph 5.2.1, delete the words "...or Architect..."*

**3.56** *In the first sentence of Subparagraph 5.2.2, delete the words "...or Architect..."*

**3.57** *In the first sentence of Subparagraph 5.2.3, delete the words "...or Architect..." in both instances where they appear.*

**3.58** *In Subparagraph 5.2.4, delete the words "...or Architect..."*

*Add the following sentence to Subparagraph 5.2.4:*

The Contractor's Request for Substitution must be made to the Agency in writing, accompanied by supporting information.

**3.59** *Add the following Subparagraph 5.2.5:*

**5.2.5** To the extent it applies, the substitution of a subcontractor is governed by Title 11, Chapter 35, paragraph 3020(2)(b) of the South Carolina Code of Laws, as amended ("statute"). Paragraph 5.2 shall be construed as complementary to the statute.

**3.60** *Delete all words after "...prejudice such rights ..." in the second sentence of Subparagraph 5.3.1.*

**3.61** *Add the following Subparagraph 5.3.2:*

**5.3.2** Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following:

**5.3.2.1** An agreement that the Agency is a third-party beneficiary of the Subcontract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Agency shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Agency resulting from any breach of representations and warranties, expressed or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement; and,

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**5.3.2.2** A requirement that the Subcontractor (or Sub-subcontractor) promptly disclose to the Contractor (or Subcontractor) any defect, omission, error, or deficiency in the Contract Documents or in the Work of which it has, or should have had, knowledge; and,

**5.3.2.3** The following Paragraphs, or Subparagraphs as appropriate, of the Conditions of the Contract: 3.2, 3.5.1, 3.18, 4.3.10, 5.4, 13.1.1, 13.13, 14.3 and 14.4; and,

**5.3.2.4** Paragraphs 4.4, 4.5 and 4.6 of A201-1997 *Conditions of the Contract* as originally issued by the American Institute of Architects and without the amendments included in this Article 12.

**3.62** *Insert the following Subparagraph 5.3.3:*

**5.3.3** The Contractor shall assure the Agency, by affidavit or in such other manner as the Agency may approve, that all agreements between the Contractor and its Subcontractor incorporate the provisions of Subparagraph 5.3.1 as necessary to preserve and protect the rights of the Agency and the A/E under the Contract Documents with respect to the work to be performed by Subcontractors so that the subcontracting thereof will not prejudice such rights.

**3.63** *Insert the following Subparagraph 5.3.4:*

**5.3.4** Upon request, the Contractor shall provide to the Agency copies of all executed or issued subcontracts, purchase orders and other documents related to the Work.

**3.64** *Insert the following new Clause to Subparagraph 5.4.1:*

**5.4.1.3** Subcontractors assigned to the Agency agree to perform assigned portions of the Work in accordance with the Contract Documents.

**3.65** *Add the following sentence to the end of Subparagraph 5.4.2:*

The equitable adjustment shall be limited to direct costs.

**3.66** *Insert the following new Subparagraph 5.4.3:*

**5.4.3** Each subcontract shall specifically provide that the Agency shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Agency's exercise of any rights under this conditional assignment.

**3.67** *Delete Subparagraph 6.1.4 in its entirety.*

**3.68** *Add the following Clauses to Subparagraph 7.2.1:*

**7.2.1.4** The Contractor shall not proceed with the Work of the Change Order until the Change Order is approved the Agency. If the amount of the Change Order exceeds the limit of the Agency's Construction Change Order Certification, it must be approved by the State Engineer before any work is performed. The amount of the Agency's certification authority is set forth in the Agreement. Any adjustment in the Contract Sum made pursuant to this Paragraph 7.2 shall be determined in accordance with Paragraph 7.5 of this Contract.

**7.2.1.5** All Change Orders shall be submitted on Form SE-480 "Construction Change Order" with appropriate documentation attached.

**3.69** *Delete Subparagraph 7.2.2 in its entirety.*

**3.70** *Add the following Subparagraph 7.2.3:*

**7.2.3** Agreement on any Change Order shall constitute a release by the Contractor of the Agency for any and all liability under this Contract attributable to such facts or circumstances giving rise to the Change Order.

**3.71** *Delete the first sentence of Subparagraph 7.3.1 and substitute the following:*

A Construction Change Directive is a written order which directs a change in the Work and states a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both, and which is prepared by the A/E on AIA Document G714 and signed by the A/E, the Contractor, if it agrees with the terms of the Directive, and the Agency.

**3.72** *Delete Subparagraph 7.3.3 and substitute the following:*

**7.3.3** Any adjustment in the Contract Sum, including reasonable overhead and profit made pursuant to Paragraph 7.3 shall be determined in accordance with Paragraph 7.5 of this Contract.

**3.73** *Delete Subparagraph 7.3.6 and substitute the following:*

**7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the A/E as provided in Clause 7.5.1.5, on the basis of reasonable expenditures and savings to those performing the Work attributable to the change, including allowances for reasonable overhead and profit.



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**3.74** *Delete the Subparagraph 7.3.7 in its entirety.*

**3.75** *In the first sentence of Subparagraph 7.3.8, change the word "...Payment ..." to "...Payment." and delete the remainder of the sentence.*

**3.76** *Insert the following Subparagraph 7.3.10:*

**7.3.10** If the Contractor defaults or neglects to execute a Change Directive, the Agency may carry out the Work in accordance with Paragraph 2.4 and Article 6.

**3.77** *Insert the following Paragraph 7.5:*

**7.5 PRICE ADJUSTMENTS**

**7.5.1 METHODS OF ADJUSTMENT.** Any adjustment in the Contract Sum made pursuant to this Paragraph 7.5 shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor:

**7.5.1.1** by agreement on a fixed price adjustment;

**7.5.1.2** by unit prices specified in the Contract or subsequently agreed upon;

**7.5.1.3** by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

**7.5.1.4** in such other manner as the parties may mutually agree; or,

**7.5.1.5** in the absence of agreement by the parties, through a unilateral initial determination by the A/E of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the A/E in accordance with Clause 7.5.3.2, and subject to review under the provisions of Paragraph 4.5 of this Contract.

**7.5.2 FINAL AGREEMENT.** When any adjustment in the Contract Sum made pursuant to clauses in this Contract becomes final (e.g., by agreement or dispute resolution), the adjustment shall be computed and documented on a Change Order.

**7.5.3 DOCUMENTATION OF COST REASONABLENESS**

**7.5.3.1 CONTRACTOR'S CHANGE ORDER PROPOSAL.** The Contractor shall submit a written proposal for review by the A/E and the Agency. The proposal shall be submitted to the Agency's representative within the time limits specified in Subparagraph 4.3.2. All costs claimed by the Contractor shall be justifiable compared with prevailing industry standards, as adjusted for local cost conditions. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable.

**7.5.3.2 CONSTRUCTION CHANGE DIRECTIVES.** For a Construction Change Directive wherein the proposed method of compensation is actual costs, and pending the collection and evaluation of actual costs as required by Clause 7.5.1.3, the Contractor shall estimate the value of the changed work. The Contractor shall itemize the estimated cost into building components and shall use the labor, material and equipment unit direct costs as listed in the most current issue of the Construction Cost Data Book most applicable to the nature of the changed work, as published by R.S. Means, with a cost index adjusted for the project locale. The Contractor shall also be permitted to add overhead and profit as shown in Subparagraph 7.5.4. Where the Contractor does not properly itemize the proposed costs as requested, the A/E shall provide the Agency with the itemization and this amount shall be the initial basis for compensation under Subparagraph

7.3.8. Upon conversion of the Construction Change Directive to a Change Order, the A/E's cost for providing this itemization shall be deducted from the final adjustment in the Contract Sum as described in Clause 7.3.9.

**7.5.4 AGREED OVERHEAD AND PROFIT RATES**

**7.5.4.1** For any adjustment to the Contract Sum for which overhead and profit may be recovered, other than those made pursuant to Subparagraph 4.3.9, the Contractor agrees to charge and accept, as full payment for overhead and profit, the following percentages of costs attributable to the change in the Work. The percentages cited below shall be considered to include all indirect costs including, but not limited to: field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. The allowable percentages for overhead and profit are as follows:

(1) To the Contractor on work performed by his own forces, 17% of the cost;

(2) To each Subcontractor involved, on work performed by their own forces, 17% of the cost;

(3) For the Contractor, for work performed by his subcontractors, 10% of the amount due the Subcontractor.

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**7.5.4.2** Using the percentages stated in Clause 7.5.4.1, any adjustment to the Contract Sum for deleted work shall include any overhead and profit attributable to the cost for the deleted Work.

**7.5.4.3** If the Contractor initiates a Change Order proposal and the Agency is not obligated to pay for all or any part of the proposal, then the Contractor shall be responsible for any A/E's fees to evaluate and process that Change Order proposal. Compensation shall be based on the Agency's contract with the A/E and the rates for Additional Services contained therein, and shall be withheld from the final payment to the Contractor.

**7.5.5 COST OR PRICING DATA**

**7.5.5.1** The Contractor shall submit cost or pricing data for any element of changed work (other than Unit Price Work) which exceeds \$25,000.00, and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of the pricing. This data shall be itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent Work, or as soon thereafter as practicable, and shall be justifiably compared with prevailing industry standards. As requested by the A/E or the Agency, the Contractor's submittal shall provide an itemized breakdown of all increases and decreases in the Contract for the Contractor and each subcontractor (at any tier) in at least the following detail: material, equipment and supply quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Worker's Compensation Insurance; equipment hours and rates, and costs of premiums for bonds and insurance, permit fees and sales, use or similar taxes related to the Work.

**7.5.5.2** Any Change Order or Change Directive for which certification is required shall contain a provision that the price to the Agency, including profit or fee, shall be adjusted to exclude any significant sums by which the Agency finds that such price was increased because the cost or pricing data furnished by the Contractor was inaccurate, incomplete or not current as of the date agreed upon between parties. Notwithstanding Subparagraph 9.10.4, such adjustments may be made after final payment to the Contractor.

**3.78** *Delete Subparagraph 8.1.2 and substitute the following:*

**8.1.2** The Date of Commencement of the Work is the date established in the SE-390, "Notice to Proceed." The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

**3.79** *Delete the last sentence of Subparagraph 8.2.2.*

**3.80** *Add the following Subparagraph 8.2.4:*

**8.2.4** Failure by the Contractor to commence actual physical work on the project within seven (7) days from the Date of Commencement, as established in the Notice to Proceed, will entitle the Agency to consider the Contractor in substantial breach of its obligations under this Contract. In this event, the Agency may withdraw the Notice to Proceed and terminate the Contract in accordance with the Contract Documents.

**3.81** *Change "...mediation and arbitration..." to "...dispute resolution..." in Subparagraph 8.3.1.*

**3.82** *Insert the following new Subparagraph 8.3.4:*

**8.3.4** The Contractor shall be permitted an adjustment in the Contract Sum, determined in accordance with Paragraph 7.5, only if the Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than seven (7) days.

**3.83** *Insert the following new subparagraph 9.2.2:*

**9.2.2** As requested by the A/E, the Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized format approved by the A/E and Agency. The breakdown shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Agency or the A/E as necessary to reflect:

**9.2.2.1** the description of Work (listing labor and material separately);

**9.2.2.2** the total value;

**9.2.2.3** the percent and value of the Work completed to date;

**9.2.2.4** the percent and value of previous amounts billed; the current percent completed and amount billed; and,

**9.2.2.5** the current percent completed and amount billed.

Any schedule of values or trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work, shall be rejected. If either the schedule of values or trade breakdown had been initially approved and subsequently used, but later was found improper for any reason, then sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

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- 3.84** *In the first sentence of Subparagraph 9.3.1 change "... ten days..." to "...twenty-one (21) days...".*

*Add the following sentence to Subparagraph 9.3.1:*

The Contractor's Application for Payment shall be in a form acceptable to the Agency. The A/E will authorize, as provided in Paragraph 9.4 and until the final pay request, monthly payments equal to ninety-six and one-half percent (96½%) of the portion of the Contract Sum properly allocable to labor, material and equipment incorporated in the Work, and allocable to material and equipment suitably stored.

- 3.85** *Add the following to Subparagraph 9.3.2:*

Rental equipment such as, but not limited to, mobile equipment, pans, forms, scaffolding, compressors, etc., shall not be considered material stored.

- 3.86** *Add the following Clauses to Subparagraph 9.6.1:*

**9.6.2.1** Contractor's attention is directed to §11-35-3030(4) of the SC Code of Laws, as amended, and the Manual concerning release of retained funds.

**9.6.2.2** Contractor's attention is directed to Title 29, Chapter 7, SC Code of Laws, as amended, concerning laborers' liens.

**9.6.2.3** Contractor shall properly disburse money received from all payments to all laborers, subcontractors or materialmen in accordance with Title 29, Chapters 6 and 7 of the SC Code of Laws, as amended.

- 3.87** *Delete Subparagraph 9.6.7 in its entirety.*

- 3.88** *Delete Subparagraph 9.7.1 and substitute the following:*

**9.7.1** If (a) the A/E does not issue a Certificate for Payment to the Agency, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or (b) the Agency does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount of the Contractor's Application for Payment certified by the A/E, or (c) the Agency does not pay the Contractor the amount awarded by a dispute resolution order within the time limit established by such order, or within seven (7) days if no time limit is stated in such order, then the Contractor may, upon seven (7) additional days' written notice to the Agency and A/E, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and startup, which shall be accomplished as provided in Paragraph 7.5. As used in this Subparagraph, the phrase "dispute resolution order" includes any decision rendered pursuant to Paragraph 4.4.

- 3.89** *Add the following Clause to Subparagraph 9.8.2:*

**9.8.2.1** The Contractor's list shall be in writing and attached to the "Contractor's written Request for Full or Partial Substantial Completion inspection. The request shall be submitted at least ten (10) days in advance of the proposed date of inspection and shall be forwarded through the A/E, who will attach its written endorsement as to whether or not it concurs with the Contractor's statement that the Work will be ready for inspection and testing on the date given. The A/E's endorsement is a convenience to the Agency only and shall not relieve the Contractor of its responsibility in the matter, nor shall the A/E's endorsement be deemed to be evidence that the Work was substantially complete and ready for inspection and testing. In the event that the A/E does not concur with the Contractor's statement, the A/E shall inform the Contractor of the basis for the A/E's non-concurrence. The Contractor may then, at its sole option, (1) defer the inspection; or, (2) request the inspection be performed in accordance with Subparagraph 9.8.3.

- 3.90** *Add the following Clauses to Subparagraph 9.8.3:*

**9.8.3.1** Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, Agency, the OSE and the A/E.

**9.8.3.2** The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the Work function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in this Contract. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in the A/E's issuance of a written list of Unfinished Work and Defective Work, commonly referred to as a "punch list", each item of which must be finished and corrected prior to Final Completion.

**9.8.3.3** The A/E and its Consultants shall conduct all Substantial Completion inspections. The Agency may elect to have other persons of its choosing also participate in the inspections. Representatives of the State Fire Marshal's Office, the Office of State Engineer and other authorities having jurisdiction may be present, at their sole discretion, at the Substantial Completion inspection or otherwise inspect the completed Work and advise the Agency whether the Work meets their respective requirements.

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**9.8.3.4** If the inspection discloses any item which is not in accordance with the requirements of the Contract Documents and will prevent the Agency from occupying or utilizing the Work for its intended use, the Contractor shall complete or correct such item upon notification by the A/E. The Contractor shall then submit a request for a follow-up inspection by the A/E to determine Substantial Completion.

**9.8.3.5** The Contractor shall proceed promptly and diligently to complete and correct items on the list of Unfinished or Defective Work. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**9.8.3.6** If more than one Substantial Completion inspection is required, the Contractor shall reimburse the Agency for all costs of reinspection or, at the Agency's option, the costs may be deducted from payments due to the Contractor.

*Delete the last sentence of Subparagraph 9.8.5 and add the following Clauses:*

**9.8.5.1** Upon such acceptance of Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the A/E, the Agency shall make payment for such Work or portion thereof as provided in the Contract Documents. The balance payable shall include the retainage of three and one half percent (3.5%) of the Contract Sum, less any retainage released under conditions of Subparagraph 9.6.2, plus an amount equal to the cost to complete or to correct, as determined by the A/E of the Uncompleted or Defective Work, plus the full amount of Liquidated Damages, if any. Retainage shall continue until Final Completion and Final Payment.

**9.8.5.2** Notwithstanding the foregoing, the payment of retainage shall be consistent with §11-35-3030(4) of the SC Code of Laws, as amended.

**3.91** *Add the following Clauses to Subparagraph 9.10.1:*

**9.10.1.1** Final Completion shall be achieved no later than thirty (30) days after Substantial Completion unless otherwise stated in the Contract Documents or modified by a Change Order. Failure of the Contractor to achieve Final Completion within the time allowed under this Subparagraph shall entitle to Agency to consider the Contractor in substantial breach of its obligations under this Contract.

**9.10.1.2** The Contractor shall notify the Agency, in writing, of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the A/E, who will attach its endorsement as to whether or not it concurs in the Contractor's statement that the Work will be ready for inspection and testing on the date stated. The A/E's endorsement is a convenience to the Agency only and shall not relieve the Contractor of its responsibility in the matter, nor shall the A/E's endorsement be deemed to be evidence that the Work was finally complete and ready for inspection and testing. In the event that the A/E does not concur with the Contractor's statement, the A/E shall inform the Contractor of the basis for the A/E's non-concurrence. The Contractor may then, at its sole option, (1) defer the inspection; or, (2) request the inspection be performed in accordance with this Subparagraph. The final inspection and testing shall be conducted in the same manner as the inspection for Substantial Completion, including, but not limited to, the requirements of Clauses 9.8.3.3, 9.8.3.4, 9.8.3.5 and 9.8.3.6 of this Contract.

**9.10.1.3** Representatives of the State Fire Marshal's Office, the Office of State Engineer and other authorities having jurisdiction may be present at the Final Completion inspection or otherwise inspect the completed Work and advise the Agency whether the Work meets their respective requirements for the Project.

**9.10.1.4** The Contractor shall then submit a request for a follow-up inspection to determine Final Completion. If more than one Final Completion inspection is required, the Contractor shall reimburse the Agency for all costs of reinspection or, at the Agency's option, the costs may be deducted from payments otherwise due to the Contractor.

**9.10.1.5** Approval of Work at or as a result of any inspection required herein shall not release the Contractor or its surety from responsibility for complying with the Contract.

**3.92** *Add the following Clause to Subparagraph 9.10.4:*

**9.10.4.4** faulty or defective Work appearing after the date of Substantial Completion.

**3.93** *In Subparagraph 9.10.5, after the word "...those..." insert the phrase "...specific claims in stated amounts that have been..."*

**3.94** *In Subparagraph 10.3.1 after the word "...persons ..." , insert the words "...or serious losses to real or personal property..."*

*Add the following Clause to Subparagraph 10.3. 1:*

**10.3.1.1** The Agency and Contractor hereby agree that this Paragraph shall apply only to hazardous, toxic or radioactive materials or substances subject to the regulations of agencies having jurisdiction, such as, but not limited to, the S.C. Department of Health and Environmental Control (SCDHEC), the U.S. Environmental Protection Agency (USEPA) and the U.S. Nuclear Regulatory Commission (USNRC).

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**3.95** *Add the following Clauses to Subparagraph 10.3.2:*

**10.3.2.1** Any adjustment in the Contract Sum, including reasonable overhead and profit, made pursuant to this Subparagraph shall be determined in accordance with Paragraph 7.5 of this Contract.

**10.3.2.2** The Work in the affected area shall be resumed immediately following the occurrence of any of the following events: (a) the Agency causes remedial work to be performed that results in the absence of materials or substances; or (b) the Agency and the Contractor, by written agreement, decide to resume performance of the Work; or (c) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Agency and the Contractor, which is prepared by an environmental engineer reasonably satisfactory to both the Agency and the Contractor.

**10.3.2.3** For the purposes of this Contract, the term "rendered harmless" shall be interpreted to mean that measured levels of verified hazardous, toxic or radioactive materials or substances are less than the applicable standards established by authorities having jurisdiction. In no event, however, shall the Agency have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible, unless such materials or substances were expressly required by the Contract Documents. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or radioactive, or made up of any items that are hazardous, toxic, or radioactive.

**3.96** *Delete Subparagraph 10.3.3 in its entirety.*

**3.97** *Delete Paragraph 10.4 in its entirety.*

**3.98** *Delete Paragraph 10.5 in its entirety.*

**3.99** *Add the following to Subparagraph 10.6.1:*

Written notice of the emergency, including an estimate of cost and probable effect of delay on the progress of the Work, must be given by the Contractor to the A/E as soon as possible, but in no case more than ten (10) days after the start of the emergency.

**3.100** *Change the second sentence of Subparagraph 11.1.2 to read:*

Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

*Add the following Clauses to Subparagraph 11.1.2:*

**11.1.2.1** Liability Insurance shall include all major divisions of coverage and be on a Commercial basis including the following:

- (1) Premises - Operations.
- (2) Independent Contractor's Protective.
- (3) Products and Completed Operations.
- (4) Personal and Advertising Injury.
- (5) Contractual, including specified provision for Contractor's obligations under Paragraph 3.1 8.
- (6) Broad Form Property Damage including Completed Operations.
- (7) Owned, Non-Owned and Hired Motor Vehicles.

**11.1.2.2** The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law or other provisions of this Contract:

- (1) COMMERCIAL GENERAL LIABILITY:
  - (a) General Aggregate (per project) \$ 1,000,000
  - (b) Products/Completed Operations \$ 1,000,000
  - (c) Personal and Advertising Injury \$ 1,000,000
  - (d) Each Occurrence \$ 1,000,000
  - (e) Fire Damage (Any one fire) \$ 50,000
  - (f) Medical Expense (Any one person) \$ 5,000
- (2) BUSINESS AUTO LIABILITY (including All Owned, Non-Owned, and Hired Vehicles):
  - (a) Combined Single Limit \$ 1,000,000
  - OR
  - (b) Bodily Injury & Property Damage (each) \$ 750,000
- (3) WORKER'S COMPENSATION:
  - (a) State Statutory
  - (b) Employer's Liability \$100,000 Per Accident

\$500,000 Disease, Policy Limit  
\$100,000 Disease, Each Employee

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**3.101** *Add the following Clause to Subparagraph 11.1.3:*

**11.1.3.1** Certificates of Insurance shall be in the form of the latest edition of the ACORD 25S and shall be filed with the Agency prior to commencement of the Work. In addition to Certificates of Insurance, the Contractor shall supply a written endorsement to the Contractor's general liability insurance policy that names the Agency as an additional insured. The endorsement shall provide that the Contractor's liability insurance policy shall be primary, and that any liability insurance of the Agency shall be secondary and noncontributory.

**3.102** *Add the following Subparagraph 11.1.4:*

**11.1.4** For informational purposes, the Contractor is advised that Worker's Compensation Insurance is required for all Owners and executive officers of entities incorporated in the State of South Carolina.

**3.103** *Add the following Subparagraph 11.1.5:*

**11.1.5** The Aggregate Limits of Insurance required by Subparagraph 11.1.2 shall apply, in total, to this Contract only. This shall be indicated on the insurance certificate or an attached policy amendment.

**1 11.1.5.1** The insurance policies and Certificates of Insurance required by this Contract shall contain a provision that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy or evidenced by such Certificates of Insurance shall have effect unless the Agency has been given at least thirty (30) days' prior written notice. The Contractor shall provide a minimum of thirty (30) days written notice to the Agency of any proposed reduction of coverage limits, including every coverage limit identified in Subparagraph 11.1.2, or any substitution of insurance carriers.

**1 11.1.5.2** In no event shall any failure of the Agency to receive certified copies or certificates of policies required under this Article or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Agency of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

**3.104** *Delete Paragraph 11.3 in its entirety.*

**3.105** *Delete the first sentence of Subparagraph 11.4.1 and in its place insert the following:*

"Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles."

*Add the following sentence to the end of Subparagraph 11.4.1:*

"The Owner shall be a named insured on the policy."

*Delete Subparagraph 11.4.1.2.*

*Delete Subparagraph 11.4.1.3*

*Delete Subparagraph 11.4.2, and in its place insert the following:*

**"11.4.2 Boiler and Machinery Insurance.** The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall both be named insureds."

*Delete Subparagraph 11.4.3.*

*Delete Subparagraph 11.4.4 and in its place insert the following:*

**"11.4.4** If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order."

*Delete Subparagraph 11.4.5.*

*Delete Subparagraph 11.4.6 and in its place insert the following:*

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*Delete Subparagraph 11.4.6 and in its place insert the following:*

**“11.4.6** Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Paragraph 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner.”

*Delete the first full sentence Subparagraph 11.4.7(after the words “Waivers of Subrogation.”) and in its place insert the following:*

“The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent the property insurance provided by the Contractor pursuant to this Article 11.4 covers and pays for the damage, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary.”

*Delete Subparagraph 11.4.8 and in its place insert the following:*

**“11.4.8** In the event of a loss, the Contractor shall replace the damaged property and shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payment to their Sub-subcontractors in similar manner.”

*Delete Subparagraph 11.4.9.*

*Delete Subparagraph 11.4.10.*

**3.106** *Delete Subparagraph 11.5.1 and substitute the following:*

**11.5.1** If required as stated in the SE-310, the Contractor shall provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the Contract Sum.

**1 1.5.1.1** The Surety shall have, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty". In addition, the Surety shall have a minimum "Best Financial Strength Category" of "Class V", and in no case less than five (5) times the contract amount.

**11.5.1.2** The Performance Bond shall be written on Form SE-355, "Performance Bond" and the Payment Bond shall be written on Form SE-357, "Labor and Material Payment Bond", and both shall be made payable to the Agency.

**11.5.1.3** The Performance and Labor and Material Payment Bonds shall:

- (1) be issued by a surety company licensed to do business in South Carolina; and,
- (2) be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and,
- (3) remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer; and,
- (4) display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond stating that:
  - (a) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Agency or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
  - (b) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Agency.
- (5) Notwithstanding the foregoing, any bonds required by this Contract shall meet the requirements of the SC Code of Laws, as amended.

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**3.107** *Add Subparagraph 11.5.3 as follows:*

**11.5.3** The Contractor shall furnish the required bonds to the Agency before execution of the Contract.

**3.108** *Add Subparagraph 11.5.4 as follows:*

**11.5.4** The Contractor shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to, or waiver of:

**11.5.4.1** notices of changes in the Work;

**11.5.4.2** requests for reduction or release of retention;

**11.5.4.3** requests for final payment; and

**11.5.4.4** any other item required by the Surety.

The Agency may, in the Agency's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Agency's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

**3.109** *Delete Subparagraph 12.1.1 and insert the following:*

**12.1.1** If a portion of the Work is covered contrary to the requirements specifically expressed in the Contract Documents, including, inspections of work-in-progress required by all authorities having jurisdiction over the Project, then the portion of Work so covered shall, upon demand of the A/E or the authority having jurisdiction, be uncovered for observation and be replaced at the Contractor's expense without change in the Contract Time.

**3.110** *Add the following to Clause 12.2.1.1:*

If, prior to the date of Substantial Completion, the Contractor, a Subcontractor, or anyone for whom either is responsible, uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Agency.

**3.111** *In the third sentence of Clause 12.2.2.1, delete the phrase "...and to make a claim for breach of warranty...".*

**3.112** *At the end of Clause 12.2.2.3, add the phrase "...unless otherwise provided in the Contract Documents."*

**3.113** *Delete Subparagraph 13.1.1 and substitute the following:*

**13.1.1** The Contract shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of or relating to the Contract shall be governed by the laws of the State of South Carolina.

**13.1.2** As required by §10-1-180 of the SC Code of Laws, as amended, the Office of State Engineer shall determine the enforcement and interpretation of all building codes and referenced standards on state buildings. The Contractor shall refer any questions, comments or directives from local officials to the Agency and the Office of State Engineer for resolution.

**3.114** *In the second sentence of Subparagraph 13.2.1, delete the phrase "Except as provided in Subparagraph 13.2.2,..." and capitalize "...neither...".*

**3.115** *Delete Subparagraph 13.2.2 in its entirety.*

**3.116** *Delete Subparagraph 13.3.1 and substitute the following:*

**13.3.1** Unless otherwise permitted herein, all notices contemplated by the Contract Documents shall be in writing and shall be deemed duly given:

**13.3.1.1** upon actual delivery to the person identified in the A101, if delivery by hand; or,

**13.3.1.2** upon receipt by the transmitting party of confirmation or reply, if delivery is by facsimile, telex or telegram; or,

**13.3.1.3** upon receipt by the person identified in the A101, if delivery is by deposit into the United States mail, certified mail, return receipt requested.

**3.117** *Add Subparagraph 13.3.2 as follows:*

**13.3.2** Each such notice shall be sent to the respective party at the address provided in the A101, or to any other address as the respective party may designate by notice delivered pursuant hereto.



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**3.118** *Add Subparagraph 13.4.3 as follows:*

**13.4.3** Termination of the Contract by either party for any reason shall not relieve the parties of any obligation theretofore accorded under this Contract. Notwithstanding Subparagraph 9.10.4, and without limiting the foregoing sentence, the following provisions (as amended) of the Contract Documents shall survive termination for whatever cause, expiration or completion:

- 1.6** | Ownership and Use of Drawings, Specifications and Other Instruments of Service;
- 3.5** | Warranty
- 3.17** | Royalties, Patents and Copyrights
- 3.18** | Indemnification
- 3.10** | Waiver of Listed Damages
- 3.11** | Waiver of Claims Against the A/E
- 4.5** | Dispute Resolution
- 7.5.5** | Cost or Pricing Data
- 11.1** | Contractor's Liability Insurance
- 11.5** | Performance and Payment Bond
- 12.2** | Correction of Work
- 13.1** | Governing Law
- 13.4** | Rights and Remedies
- 13.12** | Retention and Audit of Contractor's Records

**3.119** *Add the following to Subparagraph 13.5.5:*

The Contractor shall give the A/E timely notice in advance of tests, inspections or approvals.

**3.120** *Delete Subparagraph 13.6.1 and substitute the following:*

**13.6.1** Payments made under the Contract Documents are subject to the requirements of Title 29, Chapter 6 of the South Carolina Code of Laws, as amended.

**3.121** *Delete Paragraph 13.7 in its entirety.*

**3.122** *Add the following Paragraph 13.9:*

**13.9 DRUG-FREE WORKPLACE**

The Contractor certifies to the Agency that Contractor will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

**3.123** *Add the following Paragraph 13.10:*

**13.10 CANCELLATION AFTER AWARD**

Pursuant to §11-35-1520 of the SC Code of Laws, as amended, and South Carolina Regulation 19-445.2085, this Contract may be canceled after award, but prior to issuance of the Notice to Proceed. In such event, the Contractor shall recover, as its sole remedy, its reasonable bid preparation costs.

**3.124** *Add the following Paragraph 13.11:*

**13.11 BANKRUPTCY**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Agency. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

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**3.125** *Add the following Paragraph 3.12:*

**13.12 RETENTION AND AUDIT OF CONTRACTOR'S RECORDS**

The Contractor and all subcontractors shall comply with all applicable obligations of §11-35-2220 of the SC Code of Laws, as amended. Accordingly, the Agency shall be entitled, at reasonable times and places, to audit the books and records of both the Contractor and any subcontractor who has submitted cost or pricing data pursuant to either this Contract or to §11-35-1830 to the extent that such books and records relate to such cost or pricing data. If any cost or pricing data is required for this Contract or any Modification, the Contractor and any subcontractor shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Chief Procurement Officer. If this Contract or any Modification (other than a firm fixed price contract) is negotiated, the Agency shall be entitled to audit the books and records of the Contractor and any subcontractor to the extent that such books and records relate to the performance of the Contract or any Modification. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime contract and by any subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. As used in the paragraph, the phrase "Chief Procurement Officer" shall have the definition given that phrase in §11-35-310.

**3.126** *Add the following Subparagraph 13.13:*

**13.13 UNIT PRICE WORK**

**13.13.1** Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the initial Contract Sum will be deemed to include an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as identified in the Contract. The estimated quantity for each item of Work represents the Agency's best estimate of the amount of each item to be required of the Contractor, but the amounts are not guaranteed, and are solely for the purpose of comparison of Bids and determining an initial Contract Sum. Determinations of the actual quantities and classifications of Unit Price Work performed by the Contractor will be made by the A/E as described below.

**13.13.2** Subject to an adjustment pursuant to Subparagraph 4.3.9, each unit price will be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's total costs, including overhead and profit, for each separately identified item.

**13.13.3** The A/E will determine the actual quantities and classifications of Unit Price Work performed by the Contractor. The A/E will review with the Contractor its preliminary determinations on such matters before rendering a written decision or issuing a recommendation on the Contractor's Applications for Payment. The A/E's written decisions or recommendations will be final and binding on the Agency and the Contractor, except as modified by the A/E to reflect changed factual conditions or more accurate data, and subject to Paragraph 4.4. For purposes of Paragraph 4.4, the A/E's written decisions or recommendations shall serve as the A/E's initial decision.

**3.127** *Add the following Subparagraph 13.14:*

**13.14 PROCUREMENT OF MATERIALS BY AGENCY.**

The Contractor accepts assignment of all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall, upon delivery, be responsible for the storage, protection, proper installation, and preservation of such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All Contractor warranty of workmanship and correction of the Work obligations under the Contract Documents shall apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

**3.128** *In Subparagraph 14.1, change "...30..." to "...sixty (60)".*

**3.129** *Delete Clauses 14.1.1.3 and 14.1.1.4.*

**3.130** *In Subparagraph 14.1.3, delete all words after "...Work executed..." and add "...Any adjustment to the Contract Sum made pursuant to this Subparagraph shall be made in accordance with the requirements of Paragraph 7.5."*

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**3.131   Delete Subparagraph 14.2.1 and substitute the following:**

**14.2.1** The Agency may terminate the Contract, or any separable part of it, if the Contractor:

**14.2.1.1** fails to complete the Work within the time specified in the Contract Documents, including any authorized adjustments; or,

**14.2.1.2** fails to prosecute the Work, or any separable part of the Work, with the diligence, resources and skill that will ensure its completion within the time specified in the Contract Documents, including any authorized adjustments; or,

**14.2.1.3** fails to make payment to Subcontractors for materials or labor in accordance with Title 29, Chapter 6 of the South Carolina Code of Laws, as amended, and the respective agreements between the Contractor and the Subcontractors; or,

**14.2.1.4** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or,

**14.2.1.5** fails to proceed as required by Subparagraph 4.3.3 pending final resolution of a Claim; or,

**14.2.1.6** fails to comply with any of the other material provisions of this Contract.

**3.132   Delete Subparagraph 14.2.2, but not the subordinate Clauses and substitute the following:**

**14.2.2** The Agency's right to terminate this Contract under Subparagraph 14.2.1 may be exercised if the Contractor does not cure such failure within seven (7) days (or more if authorized in writing by the Agency) after receipt of the notice from the Agency specifying the general nature of the failure. The Agency shall notify the Contractor's surety within a reasonable time. When terminating pursuant to Paragraph 14.2, the Agency may, without prejudice to any other rights or remedies of the Agency, and subject to any prior rights of the surety:

**3.133   Insert "...including Liquidated Damages, if any,..." after the phrase "...other damages..." in the first sentence of Subparagraph 14.2.4.**

**3.134   Insert the following to Subparagraph 14.3.2 after the second sentence:**

Any adjustment to the Contract Sum made pursuant to this Subparagraph shall be made in accordance with the requirements of Paragraph 7.5.

**3.135   Delete Subparagraph 14.4.1 and substitute the following:**

**14.4.1** The Agency may, at any time, terminate the Contract, or the Contract Work, in whole or in part, for the Agency's convenience and without cause.

**14.4.1.1** Upon written consent of the Contractor, the Agency may reinstate the terminated portion of this Contract or Contract Work in whole or in part by amending the notice of termination if it has been determined that

**14.4.1.2** circumstances clearly indicate a requirement for the terminated work; and,

**14.4.1.3** reinstatement of the terminated work is advantageous to the Agency.

**3.136   Add the following Clause to Subparagraph 14.4.2:**

**14.4.2.4** complete the performance of the Work not terminated, if any.

**3.137   In Subparagraph 14.4.3 delete the phrase "...along with reasonable overhead and profit on the Work not executed.", and substitute "Any adjustment to the Contract Sum made pursuant to this Subparagraph shall be made in accordance with the requirements of Paragraph 7.5.**

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**3.138** Add the following Article 15:

**ARTICLE 15 PROJECT-SPECIFIC REQUIREMENTS AND INFORMATION**

**15.1 Project Number:** \_\_\_\_\_

**15.2 Project Name:** \_\_\_\_\_

**15.3 Inspection Requirements:** *(Indicate the inspection services required by the Contract)*

- ☐ Special Inspections are required and are not part of the Contract Sum. *(see section 01400)*
- ☐ Building Inspections are required and are not part of the Contract Sum. *(see section 01400)*
- ☐ Building Inspections are required and are part of the Contract Sum. The inspections required or this Work are : *(Indicate which services are required and the provider)*
  - ☐ Civil
  - ☐ Structural
  - ☐ Mechanical
  - ☐ Plumbing
  - ☐ Electrical
  - ☐ Gas
  - ☐ Other *(list)*

**Remarks:**

\_\_\_\_\_  
\_\_\_\_\_

**15.4** List Cash Allowances, if any. *(Refer to attachments as needed. If none, enter NONE)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**15.5** Requirements for Record Drawings, if any. *(Refer to attachments as needed. If none, enter NONE)*

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\_\_\_\_\_  
\_\_\_\_\_

**15.6** Requirements for Shop Drawings and other submittals, if any, including number, procedure for submission, list of materials to be submitted, etc. *(Refer to attachments as needed. If none, enter NONE)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**15.7** Requirements for signage, on-site office or trailer, utilities, restrooms, etc., in addition to the Contract, if any. *(Refer to attachments as needed. If none, enter NONE)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**15.8** Requirements for Project Cleanup in addition to the Contract, if any. *(Refer to attachments as needed. If none, enter NONE)*

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**15.9** List all attachments that modify these General Conditions. *(If none, enter NONE)*

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